

RESOLUTION NO. 3052

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AND DISPOSITION AGREEMENT DATED SEPTEMBER 25, 2007 WITH SONORAN DEVELOPMENT PARTNERS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS SUCCESSOR-IN-INTEREST TO HERITAGE MARKETPLACE, LLC RELATED TO THE DEVELOPMENT OF CERTAIN PROPERTY LOCATED IN THE TOWN; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, A.R.S. § 9-500.05 authorizes the Town of Gilbert to enter into development agreements related to the development of property in the Town of Gilbert and to amend such development agreements; and

WHEREAS, Gilbert and Heritage Marketplace, LLC entered into a Development and Disposition Agreement dated September 25, 2007 ("Agreement") recorded in the Office of the Maricopa County Recorder on November 2, 2007 at 2007-1184572, as amended by the First Amendment to Development and Disposition Agreement ("First Amendment") recorded in the Office of the Maricopa County Recorder on December 21, 2009 at 2009-1165756, related to the development of the project known as the Heritage Marketplace located in Heritage District Redevelopment Area and the Heritage District Overlay Zoning District in the Town of Gilbert.

WHEREAS, the Town Council finds that the redevelopment of the historic downtown is in the best interest of Gilbert and its residents and that the Agreement and this Amendment will further those interests.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, that the Second Amendment to the Agreement attached hereto as Exhibit A, be and is hereby approved and the Mayor is authorized and directed to execute said Second Amendment to the Agreement; and

FURTHER RESOLVED, that the Town Clerk be and she is hereby authorized and directed to record a copy of the Second Amendment to the Agreement with the Maricopa County Recorder not later than ten days from the date of the Agreement.

FURTHER RESOLVED, that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

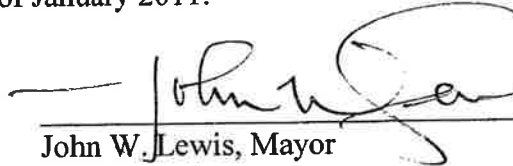
PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 27th DAY OF JANUARY 2011.

AYES: Abbott, Cooper, Daniels, Lewis, Presmyk, Sentz

NAYES: None ABSENT: Crozier

EXCUSED: None ABSTAINED: None


APPROVED this 27th day of January 2011.


John W. Lewis, Mayor

ATTEST:


Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:


Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C.
Town Attorneys
By: Susan D. Goodwin

When recorded mail to:

Town of Gilbert

Town Clerk

50 East Civic Center Drive

Gilbert AZ 85296

**OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20110136395 02/15/2011 09:50 N
ELECTRONIC RECORDING
Gilbert613-45-1-1--**

This area reserved for County Recorder

CAPTION HEADING

Second Amendment to the Development and Disposition Agreement

DO NOT REMOVE

Exhibits B, which were adopted with and are incorporated into Development and Disposition Agreement are available for viewing in the Office of the Town Clerk, Town of Gilbert, 50 East Civic Center Drive Gilbert AZ 85296.

Exhibit B

Conceptual Development Plan

When recorded return to:

Town Clerk
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

Contract #2008-7101-0248

EXHIBIT A

**SECOND AMENDMENT TO THE
DEVELOPMENT AND DISPOSITION AGREEMENT**

THIS SECOND AMENDMENT (this "Amendment") is entered into this 27th day of January, 2011, by and between SONORAN DEVELOPMENT PARTNERS, LLC, an Arizona limited liability company ("Developer"), and the TOWN OF GILBERT, ARIZONA, an Arizona municipal corporation ("Gilbert") for the development and disposition of the Heritage Marketplace in the downtown Heritage District ("Heritage Marketplace" or "Project")

RECITALS:

A. Gilbert entered into a DEVELOPMENT AND DISPOSITION AGREEMENT (the "Agreement") with Heritage Marketplace, LLC dated September 25, 2007 recorded in the Office of the Maricopa County Recorder on November 2, 2007 at 2007-1184572, as amended by the First Amendment to Development and Disposition Agreement ("First Amendment") recorded in the Office of the Maricopa County Recorder on December 21, 2009 at 2009-116576 to redevelop property located in an area known as the "Heritage District."

B. The real property that is the subject of this Second Amendment to Development and Disposition Agreement ("Second Amendment") is located at the northwest corner of Gilbert Road and Vaughn Avenue, and more specifically described in the attached Exhibit B to this Second Amendment to Development and Disposition Agreement ("Property").

C. Developer is the successor-in-interest of Heritage Marketplace, LLC and intends to develop the Heritage Marketplace.

D. Gilbert and Developer desire to further amend the Agreement in certain respects, and the parties desire to enter into this Second Amendment, which upon execution hereof and approval by Gilbert and recordation shall be fully binding upon the parties.

E. The Project has received final approval of the revised site plan for Heritage Marketplace pads A & B and conceptual approval for building pads 1, 2, 3 and 4. In addition, the design and location of the Parking Structure, as that term is defined in the Agreement, have received final approval.

F. Developer has advised Gilbert that the downturn in the economy has presented challenges in developing the Property and;

01/27/11

G. More time is needed to develop the Property.

H. This Amendment is being entered into for the purposes of satisfying the above Recitals and is consistent with the Redevelopment Plan for the Heritage District and Gilbert's General Plan.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subparagraph 5.8 is hereby amended as follows:

The Parties agree that construction of the Project shall commence no later than December 31, 2013, subject to Unavoidable Delays (as that term is defined in Subparagraph 6.1) or if Gilbert fails to meet obligations established in Subparagraph 4.3.

2. Subparagraph 5.8.1 is hereby amended as follows:

Except in the event of Unavoidable Delay (as that term is defined in Subparagraph 6.1), if Developer has commenced construction on the Property by December 31, 2013, or such later date as the parties agree in writing, but thereafter fails to substantially complete construction (as defined as a point in time when Gilbert is able to issue a Temporary Certificate of Occupancy for the building) of either Building A or Building B by September 1, 2014, or such later date as the parties agree in writing, subject to the occurrence of any Unavoidable Delays or delays caused by Gilbert, then Gilbert shall have the right to provide a written notice of default to Developer stating that the Developer has sixty (60) days to complete either Building A or Building B without penalty. If the Developer does not complete either Building A or Building B within the 60 day period the Developer shall pay \$23,600 to Gilbert for each month that either Building A or Building B is not complete for a period up to four months and an amount not to exceed \$94,400.

3. The NOTICES section, XXII, is amended as follows:

Buyer:

Rhett Bordner, Managing Partner
Sonoran Development Partners, LLC
1628 East Southern Avenue, Suite 9-131
Tempe, AZ 85282

Brian Martin
Sonoran Development Partners, LLC
1628 East Southern Avenue, Suite 9-131
Tempe, AZ 85282

David Sellers
LGE Design Build
740 N. 52nd Street
Phoenix, AZ 850084.

4. Developer shall execute a new Parking License Agreement in the form attached hereto as Exhibit 1. Exhibit A to the Parking License Agreement, Legal Description of the Heritage Marketplace Parking Structure Site, shall be mutually agreed to by the parties and attached to the Parking License Agreement. If the parties do not reach mutual agreement on Exhibit A on or before March 31, 2011, the Parking License Agreement shall terminate.
5. Exhibit E (Schedule of Performance) to Agreement is replaced with the attached revised Exhibit E dated January 27, 2011.
6. Except as otherwise herein amended, the Agreement and the First Amendment are in all respects hereby ratified and confirmed.
7. Gilbert consents to the assignment of this Agreement, as amended, from Heritage Marketplace, LLC to Sonoran Development Partners, LLC. Developer hereby assumes all obligations, liabilities and responsibilities under the Agreement and First Amendment for the acts and omissions of Heritage Marketplace, LLC known and unknown, for all purposes. Developer shall execute a new Real Estate Purchase Agreement in substantially the same form as attached to the Agreement.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

TOWN OF GILBERT, an Arizona municipal corporation

By John W. Lewis
John W. Lewis, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 27th day of January, 2011, before me, the undersigned officer, personally appeared John W. Lewis, who acknowledged himself to be the Mayor of the TOWN OF GILBERT, an Arizona municipal corporation:

☒ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by
me duly sworn;
_____ whose identity I verified on the basis of his _____,

and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Brandy Hayton
Notary Public



HERITAGE MARKETPLACE, L.L.C.
an Arizona Limited Liability Company

By Rhett Bordner

Rhett Bordner
Its Managing Partner

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 11th day of February, 2011, before me, the undersigned officer, personally appeared Rhett C Bordner, who acknowledged him/herself to be PARTNER of SONORAN DEVELOPMENT PARTNERS, LLC, an Arizona limited liability company:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
☒ whose identity I verified on the basis of his/her ARIZONA DRIVERS license,

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

[Signature]
Notary Public



EXHIBIT B Conceptual Development Plan

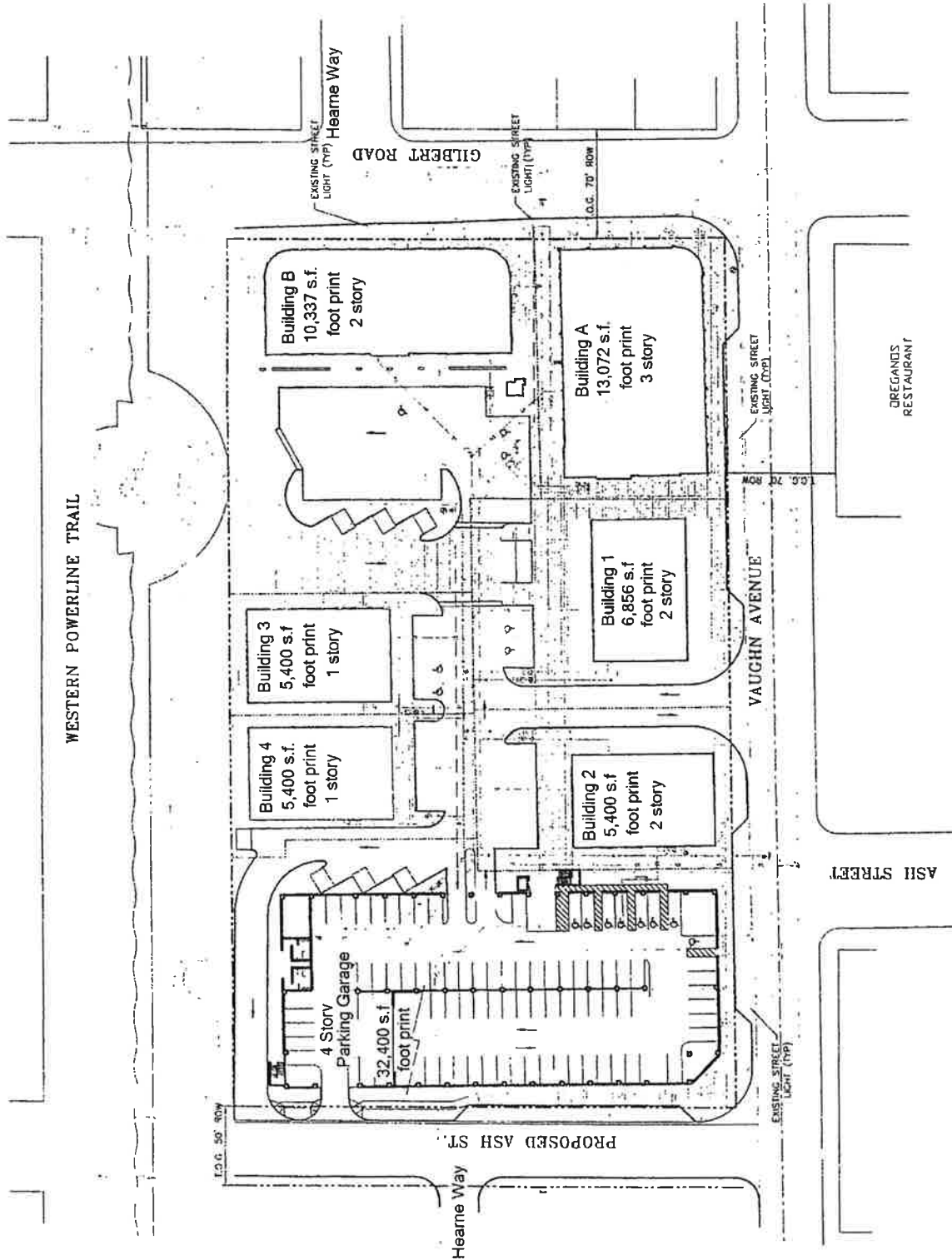


EXHIBIT E
SCHEDULE OF PERFORMANCE

The following revised schedule is preliminary in nature and represents approximate submittal dates and plan turn-around times. Since the Project will be part of the P.E.R.T. program, a final schedule will be reached by mutual consent of the Gilbert Development Services Department and representatives of Sonoran Development Partners, LLC prior to submittal of plans.

Site Plan/Architecture

All Planning Division submittals and hearings, except for signage, are complete for Buildings A & B and the Parking Structure and the Project has been approved by the Design Review Board, Redevelopment Commission and Town Council. Future approvals will be needed for the individual pad sites as they are developed as they have only received conceptual approval from the Redevelopment Commission. The following draft schedule is representative of the design review/approval process:

Applicant to submit required documentation for the individual pad sites to the Redevelopment Commission.

Redevelopment Commission hearing to be heard within two months (approximate) from date of submittal.

A more exact schedule will be worked out through the P.E.R.T. process.

Permits

Typical turn-around time for construction drawing permits is 24 calendar days for first review and 14 calendar days for second review. A more exact schedule will be worked out through the P.E.R.T. process.

Commencement/Completion of Construction

SONORAN DEVELOPMENT PARTNERS, LLC will commence construction for development of the Property no later than December 31, 2013 and complete construction no later than September 1, 2014. Commencement of construction will be defined by the start of the concrete foundations for either Building A or Building B. Completion of construction will be defined as the date a certificate of completion (or equivalent) as issued by Gilbert for either Building A or Building B.

1/27/11

When recorded return to:

Town Clerk
Town of Gilbert
50 E. Civic Center Drive
Gilbert, AZ 85296

PARKING LICENSE AGREEMENT

This Parking License Agreement is made this _____ day of January 2011, by and between Sonoran Development Partners, LLC, an Arizona limited liability company (hereinafter "Licensee") and the Town of Gilbert, a municipal corporation (hereinafter "Licensor").

Recitals:

- A. Pursuant to the terms of a Development and Disposition Agreement (as amended in the First and Second Amendments to the Development and Disposition Agreement) executed concurrently between Licensor and Licensee, Licensee will acquire the Property and subsequently develop the Property with a mixed-use project consistent with the Heritage District zoning designation of the Property (the "Project").
- B. The success of the Project depends on the availability of adequate parking for users and patrons of the Project.
- C. Economic development in the Heritage District will depend on the availability of parking for downtown businesses. The parking structure to be constructed pursuant to this Parking License Agreement ("License") will serve the critical roles of (i) promoting continued economic growth and development of the Heritage District, and (ii) attracting Class A office projects into the downtown to provide a strong employment base, support existing retail and restaurant uses and serve as a catalyst to attract desired uses in the Heritage District.
- D. Licensor intends to construct or cause to be constructed a public parking garage or similar structure (the "Parking Structure") on the real property described on Exhibit A (the "Property") to provide parking to the general public, including the Property.
- E. The Town Council finds that the economic development benefits to the Heritage District that will result from the location of the Project in the Heritage District outweigh the cost and burden on Licensor imposed by the allocation of parking spaces for use by the Project in accordance with this License.

In consideration of the covenants and agreements contained herein, Licensors grants to Licensee a license to enter upon and use the Licensed Property under the following terms and conditions:

Terms and Conditions:

1. Grant of License: Licensors hereby grants to Licensee a license to use the Parking Structure as follows:

- (a) Licensors shall retain ownership, title and use of the Parking Structure.
- (b) Licensee shall have the exclusive right, in perpetuity, to use no more than 250 parking stalls within the Parking Structure for exclusive use of patrons of the Property (including employees of tenants, visitors, and guests of Buildings A & B and pad sites 1, 2, 3 & 4 as designated on the Concept Development Plan), as provided in the concurrently executed Development and Disposition Agreement (the "Licensed Property").
- (c) The specific location of the parking stalls constituting the Licensed Property shall be subject to mutual review and approval by the Licensors and Licensee.
- (d) For the first seven (7) years after the execution of this License, Licensors shall not charge Licensee for its use of the Licensed Property except as set forth in the concurrently executed Development and Disposition Agreement at paragraphs 4.1.3 and 5.11. At the end of the seven (7) year period, at Licensors's discretion, Licensors may begin to charge for parking, including parking reserved for use by the patrons of Licensee. The charge for parking shall be based upon market rates for parking in similar parking structures as determined by an independent evaluation, as set forth in paragraph 4.1.4 of the concurrently executed Development and Disposition Agreement.
- (e) As set forth in the concurrently executed Development and Disposition Agreement at paragraphs 4.1.3 and 5.11, Licensee shall cooperate with Licensors in the leasing of a certain portion of covered and "reserved for individual" parking stalls to employees of tenants of the Project. It is anticipated that between 10% to 15% (approximately 50 spaces) of the total number of stalls constituting the Licensed Property shall be allocated for use by patrons of the Project will be leased from Licensors as covered and "reserved for individual." Licensee agrees to allocate additional "reserved for individual" parking stalls within the Licensed Property if the demand increases in the future, as set forth in paragraph 5.11 of the Development and Disposition Agreement. The "reserved for individual" leased spaces will be reserved between 8:00 AM and 6:00 PM, Monday-Friday, and the rental rate to be charged shall be comparable to other parking structures of Class A buildings in the southeast Phoenix metropolitan area as determined by an independent evaluation. As set forth in paragraph 5.11 of the Development and Disposition Agreement, revenue from "reserved for individual" parking stalls will either be paid directly to Licensors or will pass through the Heritage Marketplace ownership. Revenue estimates and payment terms are set forth more fully in paragraph 5.11 of the Development and Disposition Agreement and are fully incorporated in this License Agreement. Licensee shall be responsible for collecting the parking fees and shall remit all such fees quarterly to Licensors, along with a detailed accounting of such fees. Licensors shall have the right upon reasonable notice to inspect the books and records of Licensee to confirm the

accuracy of the fee submission and Licensee's accounting.

(f) As set forth in paragraph 5.11.1 of the Development and Disposition Agreement, the balance of the Licensed Property parking stalls will be a combination of covered and non-covered stalls, and those stalls will be located in signed, permit/decal-required areas for exclusive use by the Project and will not be open parking available to the general public between the hours of 8:00 AM and 3:00 PM, Monday-Friday.

2. Operating Maintenance: During the term of this License Agreement, Licenser shall manage and maintain the Parking Structure.

3. Improvement, Alterations and Modifications to Parking Facilities: Licenser shall have the right, from time to time during the term of this License Agreement, to make capital improvements and/or alterations and modifications to the Parking Structure or any components thereof at its expense, so long as Licensee continues to have its license rights within the Parking Structure. Notwithstanding the foregoing, Licenser shall have the right to temporarily close portions of the Parking Structure in connection with any construction of any such improvements, alterations or modifications for periods not exceeding ninety (90) consecutive days or affecting more than twenty per cent (20%) of the parking spaces within the Parking Structure at any one time. Further, at its sole option and sole expense, Licenser shall have the right to temporarily relocate the two hundred and fifty (250) parking spaces licensed to Licensee should relocation be deemed necessary as part of any improvement, alteration or modifications. Licensee and Licenser shall use their best efforts to determine where such spaces shall be relocated. If Licensee and Licenser cannot mutually agree on the location of the parking spaces, the decision of Licenser shall be final.

4. Term: This License shall be a permanent license, unless: (1) Licensee and Licenser agree in writing to terminate the license; (2) Licensee abandons development of the Property as set forth in the Development and Disposition Agreement; (3) the development of the Property as set forth in the Development and Disposition Agreement is destroyed; (4) the Parking Structure is destroyed by an act of God; or (5) if the whole or any part of the Parking Structure shall be taken or condemned by any competent authority for public use or purpose during the term of this License Agreement. Provided, however, that if the Parking Structure is destroyed by an act of God and Licenser receives any funds from Licenser's insurance carrier for the restoration of any improvements, alterations or additions to the Parking Structure then Licenser shall have an obligation to rebuild the Parking Structure in at least the same condition it was in prior to the act of God if the rest of the Project is unharmed or rebuilt and this License shall automatically be renewed upon the completion of such restored Parking Structure.

5. Indemnification.

5.1 To the fullest extent permitted by law, each party, their agents, officers, officials, and employees shall pay, defend, indemnify and hold harmless the other party, their agents, officers, officials and employees, from and against all demands, claims, proceedings, suits, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), and all claim adjustment and handling expenses, relating to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, or services caused in whole or in part by the

other party, their agents, employees, tenants or invitees related to the performance of this License. The parties' duty to defend, hold harmless and indemnify each other shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting therefrom, caused in whole or in part by either parties' acts, errors, mistakes, omissions, or services in the performance of this License.

5.2 Insurance provisions set forth in this License are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

6. Insurance: The Licensee shall purchase and maintain such insurance as will protect Licensee and Licensors from claims set forth below which may arise out of or result from Licensee's use of the Licensed Property under this License, whether such use be by Licensee, its agents, employees, those permitted by Licensee to enter upon the Licensed Property and/or Licensee's contractors, their agents and employees.

(a) Claims for damages because of bodily injury, occupational sickness or disease or death of its employees;

(b) Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;

(c) Claims for damages insured by usual personal injury liability insurance which are sustained (1) by any person as a result of any offense whether directly or indirectly related to the employment of such person by Licensee, or (2) by any other person;

(d) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

(e) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;

7. Not a Lease: The Licensee shall not by virtue hereof be deemed to have become the tenant of the Licensors; provided however that as to the location of the Licensed Property, Licensee is entitled to use such property and shall be deemed merely to be a licensee entitled to enter therein for the purpose of exercising the rights and privileges granted by this License. Upon any termination of this License, the Licensors shall have the right through such means as it sees fit to remove and exclude therefrom Licensee and any of Licensee's employees without being deemed guilty of any unlawful entry, trespass or injury of any sort whatsoever.

8. Default; Remedies: In the event that either party hereto fails to perform any obligation required hereunder, such party shall be deemed to be in default under this License Agreement if it

thereafter fails to cure the default within thirty (30) days after receipt of written notice from the other party. In the event of default by either party under this License Agreement the non-defaulting party shall have all rights and remedies which may be available at law or in equity. In addition, in the event any such default is not cured within the 30-day period described in the foregoing, the non-defaulting party shall have the right to either: (i) terminate this License Agreement by giving ten (10) days prior written notice to the defaulting party, with termination to occur upon expiration of such ten (10) day period if the defaulting party has not cured the default by the end of such period or (ii) cure the default for and on behalf of the defaulting party, the cost of which performance, upon the proper payment thereof, together with all interest and penalties necessarily paid in connection therewith and any and all other damages incurred by the non-defaulting party as a result of any such default shall be paid to the non-defaulting party by the defaulting party upon demand. If the defaulting party is the Licensee, then, in that event, all of Licensee's rights and the rights of any employees or tenants leasing spaces from Licensee pursuant to the terms of paragraph 1 above, shall have no further right to use the Parking Structure or any portion thereof.

9. Attorneys' Fees: Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorneys' fees shall be paid to the prevailing party.

10. Service of Notice: All notices and demands required or permitted by this License shall be in writing and shall be deemed to have been given properly when sent by certified mail (postage pre-paid), delivered personally or given by facsimile to the party at the address below or to such other address as may be furnished:

Notices to Licensee

Rhett Bordner, Managing Partner
Sonoran Development Partners, LLC
1628 East Southern Avenue, Suite 9-131
Tempe, AZ 85282

Brian Martin
Sonoran Development Partners, LLC
1628 East Southern Avenue, Suite 9-131
Tempe, AZ 85282

David Sellers
LGE Design Build
740 N. 52nd Street
Phoenix, AZ 85008

Notices to Licensor

Town Manager
50 East Civic Center Drive
Gilbert, Arizona 85296

11. Assignment and Subletting: Licensee shall have the right to assign or sublet the parking spaces to tenants and owners of lots within the Heritage Marketplace development as provided hereunder without the written consent of the Licensor, so long as such assignment and subletting does not violate the Development and Disposition Agreement.

12. Binding Effects; Recordation: It is the intention of the parties that this License shall run with the land and be binding upon the heirs and successors of the parties. This License shall be recorded in the office of the official records of Maricopa County, Arizona.

13. Conflict of Interest: In the event Licensee elects to cancel this Agreement due to a conflict of interest as outlined in A.R.S. § 38-511, as amended, Licensee agrees to immediately give notice thereof to Licensor.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this License this ____ day of January 2011.

LICENSEE:
SONORAN DEVELOPMENT PARTNERS, LLC

By: Rhett Butler
Its: Managing Partner

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

~~January~~ ^{11/24}
The foregoing instrument was acknowledged before me, the undersigned Notary Public, this 11/24 day of ~~January~~ 2011 by Rhett Butler, who personally appeared and acknowledged himself to be the Managing Partner of Sonoran Development Partners, LLC, an Arizona limited liability company, and that he as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

03-13-2014

Lynn L. Fischer
Notary Public



LICENSOR:
TOWN OF GILBERT

By: _____

Its: _____

ACKNOWLEDGMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me, the undersigned Notary Public, this _____ day of January 2011, by _____, who personally appeared and acknowledged himself/herself to be the _____ of the Town of Gilbert, a municipal corporation, and that he/she as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

Notary Public

When recorded return to:

Town Clerk
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

Contract #2008-7101-0248

EXHIBIT A

**FIRST AMENDMENT TO THE
DEVELOPMENT AND DISPOSITION AGREEMENT**

THIS FIRST AMENDMENT (this "Amendment") is entered into this ____ day of December, 2009, by and between HERITAGE MARKETPLACE, L.L.C, an Arizona limited liability company ("Heritage Marketplace"), and the TOWN OF GILBERT, ARIZONA, an Arizona municipal corporation ("Gilbert"). Heritage Marketplace may be collectively referred to as "Developer".

RECITALS:

A. Gilbert and Developer are parties to the DEVELOPMENT AND DISPOSITION AGREEMENT (the "Agreement") dated September 25, 2007 for the redevelopment of Gilbert's historic downtown, an area known as the "Heritage District." The property is located at the northwest corner of Gilbert Road and Vaughn Avenue, and more specifically described in the attached Exhibit B to the Amended Agreement ("Property").

B. Gilbert and Developer desire to amend the Agreement in certain respects, and the parties desire to enter into this Amendment, which upon execution hereof and approval by Gilbert and recordation shall be fully binding upon the parties.

C. The Project has received final approval of the revised site plan for Heritage Marketplace pads A & B and conceptual approval for building pads 1, 2, 3 and 4. In addition, the Parking Structure design and location have also received final approval.

D. Heritage Marketplace L.L.C. has advised Gilbert that the Agreement dated September 25, 2007 presents obstacles to Developer for the acquisition of financing for the development of the property.

E. Accordingly, the Parties desire to amend the Agreement so as to: 1) Facilitate Developer's acquisition of financing for the Property's development; and 2) Permit Gilbert to participate in the profits from any sale of the Property, exclusive of building pads 1, 2, 3, or 4 by the Developer between the dates of approval of this Amendment and prior to any improvements being made on the Property.

F. This Amendment is being entered into for the purposes of satisfying the above Recitals and is consistent with the Redevelopment Plan for the Heritage District and Gilbert's General Plan.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The fourth sentence of Subparagraph 2.1 is hereby amended to read as follows:

The Project also includes four (4) proposed individual lots (totaling approximately 60,900 square feet of land area) that are expected to be marketed as "for-sale" build-to-suit opportunities to retail, restaurant, office and/or residential users.

2. The following insert is placed after the second sentence of Paragraph 3:

Furthermore, it is the stated intent of the Developer to purchase and develop the property in accordance with the terms outlined in this Agreement and that Gilbert has the same expectation of the Developer. If the Developer sells the Property outlined in this Agreement between the dates of approval of this Amendment and prior to "Improvements" (as defined below) made on the Property, then the Developer agrees to share 50% of any "Profits" (as defined below) accruing to Developer from the sale of the Property with Gilbert. However, the Parties agree and covenant that Developer may sell the four (4) pad designated sites, identified on Exhibit B, Conceptual Development Plan as parcels 1, 2, 3, and 4 and not have to share the Profits from those sales with Gilbert.

"Profits" is defined as the monetary benefit to Developer from the sale of the Property, exclusive of the four pad sites identified on the Conceptual Development Plan, and is derived by taking the sales price for the Property, less the total cost of the project which includes the purchase price of the Property of \$5.00 per square foot plus site development costs, exclusive of any administrative and management fees paid to the Developer.

"Improvements" is defined as having the Property "Pad Ready." Pad Ready is defined as having the sidewalks, utilities, building pad preparation, parking lot and driveways in place before, or concurrent with, the construction of either Building A or Building B.

3. The following new Subparagraph 3.5 shall be added to the Agreement:

Gilbert agrees to subordinate the Agreement and the Amendment to the construction loan and the permanent loan Developer acquires, with the understanding that Gilbert's lien position through this Amendment will be subordinated to only the outstanding balance of the first deed of trust financing for the construction loan and the permanent loan and such financing shall only be for the purchase price and construction costs.

4. The following new Subparagraph 3.6 shall be added to the Agreement:

The Profits shall be paid to Gilbert at close of escrow of the sale of the Property or any portion of the Property which occurs prior to "Improvements" (as defined above) made on the Property. As used in this paragraph, "sale" includes a sale, option to purchase, sale and leaseback, or any similar transaction in which the beneficial interest in the Property or portion of the Property is or is intended to be conveyed to another entity.

Developer shall give written notice to Gilbert of pending sales (as defined herein) at least thirty (30) days prior to closing any such sale.

5. The second sentence of Subparagraph 4.1.1 is hereby amended as follows:

The Parking Structure received final design approval on March 19, 2009 and construction of the Parking Structure will begin no later than thirty (30) days following the date which Developer has "dried in" (windows and doors installed, roof covered, building paper on exterior of building) either Building A or Building B, as determined by the Gilbert Building Inspector pursuant to the Gilbert building codes, or such other date mutually agreeable to the Parties (the "Parking Structure Commencement Date"), in order for Gilbert to complete construction of the Parking Structure no later than two hundred and ten (210) days following the Parking Structure Commencement Date.

6. The fourth sentence of Subparagraph 4.1.1 is hereby amended as follows:

For the first seven (7) years after the completion of construction of the Parking Structure Gilbert shall not charge a parking fee to the general public or patrons of the Property, including employees of tenants, visitors, and guests of Buildings A, B and pad sites 1, 2, 3 and 4, as designated on the Conceptual Development Plan, for use of the Parking Structure, except as provided in paragraphs 5.11 and 5.11.1 of this Agreement.

7. The last sentence of Subparagraph 4.1.1 shall be deleted since the location and design of the Parking Structure have already received final approval.

8. The first four sentences of Subparagraph 4.1.2 are hereby amended as follows:

Except in the event of Unavoidable Delay (as that term is defined in Subparagraph 6.1), if construction of the Parking Structure is not completed by the Parking Structure Completion Date, the Developer will then have the right to provide a written notice of default to Gilbert stating the Gilbert has sixty (60) days to complete the Parking Structure without penalty. If Gilbert does not complete the Parking Structure within the 60 day period Gilbert shall pay \$23,600 to the Developer for each month that the Parking Structure is not complete for a period up to four months and an amount not to exceed \$94,400. Gilbert shall also be responsible for providing sufficient surface parking within a reasonable proximity to either Building A or Building B at no additional cost to the Developer. If Gilbert has still not completed construction of the Parking Structure after the additional cure period of four months, the Developer may construct the Parking Structure pursuant to the requirements of the public bidding laws and in conformance to the design prepared by Gilbert.

9. Subparagraph 5.8 is hereby amended as follows:

The Parties agree that construction of the Project is expected to commence no later than December 31, 2010, subject to delays caused by the occurrence of any Unavoidable Delays (as that term is defined in Subparagraph 6.1) or if Gilbert fails to meet obligations established in Subparagraph 4.3.

10. Subparagraph 5.8.1 is hereby amended as follows:

Except in the event of Unavoidable Delay (as that term is defined in Subparagraph 6.1), if Developer has commenced construction on the Property by December 31, 2010, or such later date as the parties agree in writing, but thereafter fails to substantially complete construction (as defined as a point in time when Gilbert is able to issue a Temporary Certificate of Occupancy for the building) of either Building A or Building B by September 1, 2011, or such later date as the parties agree in writing, subject to the occurrence of any Unavoidable Delays or delays caused by Gilbert, then Gilbert shall have the right to provide a written notice of default to Developer stating that the Developer has sixty (60) days to complete either Building A or Building B without penalty. If the Developer does not complete either Building A or Building B within the 60 day period the Developer shall pay \$23,600 to Gilbert for each month that either Building A or Building B is not complete for a period up to four months and an amount not to exceed \$94,400.

11. The following new Subparagraph 6.18 is added to the Agreement:

Assignability of Duties and Obligations: Developer shall not assign or transfer any of its rights and duties under this First Amendment to the Development and Disposition Agreement, the Development and Disposition Agreement, the Parking License Agreement, the Real Estate Purchase Agreement, or any other agreement known of between the Parties, without the express written approval of Gilbert. A breach of this requirement by Developer shall constitute a material breach of the First Amendment and the Agreement, entitling Gilbert to recover all profits Developer may earn from such assignment. Such profits to be recovered are not limited to the Profits, as that term is defined in Paragraph 3. It is the intent of the parties that any assignee shall have the experience and financial capacity to develop and operate a Class A office complex/mixed-use retail/restaurant project consistent with the intent of the Agreement and this First Amendment. Gilbert may withhold its consent to the assignment, transfer or sale by the Developer to a third party if it determines that such third party does not have the experience and financial capacity to develop and/or operate the Project as a Class A office complex/mixed-use retail/restaurant project consistent with the intent of the Agreement and this First Amendment. If Gilbert withholds its consent to an assignment, transfer or sale by the Developer, the Developer may submit to arbitration the issue of whether the proposed assignee has the experience and financial capacity to develop and operate the Project as a Class A office complex/mixed-use retail/restaurant project. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. Each party shall choose a single arbitrator and the two so chosen shall choose a third arbitrator. The arbitrators shall base the decision solely on whether the proposed assignee has the experience and financial capacity to develop and/or operate the Project as a Class A office complex/mixed-use retail/restaurant project consistent with the intent of the Agreement and this First Amendment. Either Party may be represented by legal counsel. The decision of the arbitrators shall be final and conclusive and the right to appeal is hereby waived.

12. Exhibit C, Section IX, Close of Escrow, Subparagraph B of the Heritage Marketplace Real Estate Purchase Contract is hereby amended as follows:

The balance of the Purchase Price shall be paid and the Close of Escrow shall occur no later than ninety (90) days prior to the commencement of construction date as defined in section 5.8 of the First Amendment to the Development and Disposition Agreement or

anytime earlier at the Buyer's discretion. Subject to satisfaction of the conditions precedent to closing as described in Section 3 of the Development and Disposition Agreement and Subparagraphs 3.5 and 3.6 of the First Amendment to the Development and Disposition Agreement and subject to the provisions of Section VI of the Heritage Marketplace Real Estate Purchase Contract. Close of Escrow will be at the offices of Fidelity National Title Insurance Company in Phoenix, Arizona.

13. Exhibit A (Legal Description of Property) to Development & Disposition Agreement will be replaced with a revised Exhibit A as soon as it is available.
14. Exhibit B (Conceptual Development Plan) to Development & Disposition Agreement is replaced with the attached revised Exhibit B dated 12/15/09.
15. Exhibit E (Schedule of Performance) to Development & Disposition Agreement is replaced with the attached revised Exhibit E dated 12/15/09.
16. Exhibit 1 to Purchase Contract (Property Description for Heritage Marketplace) will be replaced with a revised Exhibit 1 as soon as it is available.
17. Except as otherwise herein amended, the Agreement is in all respects hereby ratified and confirmed.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

TOWN OF GILBERT, an Arizona municipal corporation

By 
John W. Lewis, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

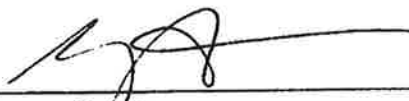
On this 15th day of December, 2009, before me, the undersigned officer, personally appeared John W. Lewis, who acknowledged himself to be the Mayor of the TOWN OF GILBERT, an Arizona municipal corporation:

✓ whom I know personally;
 whose identity was proven to me on the oath of _____, a credible witness by
me duly sworn;
 whose identity I verified on the basis of his _____,

and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:


Notary Public



HERITAGE MARKETPLACE, L.L.C.
an Arizona Limited Liability Company

By Rhett C Bordner

Rhett Bordner
Its Partner

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this 18th day of December, 2009, before me, the undersigned officer, personally appeared RHETT C BORDNER, who acknowledged him/herself to be PARTNER of HERITAGE MARKETPLACE, L.L.C., an Arizona limited liability company:

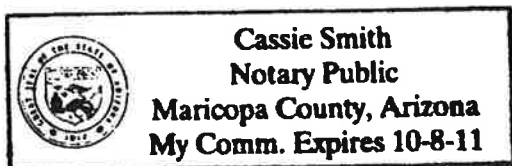
_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by me duly sworn;
X whose identity I verified on the basis of his/her AZ DL

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Cassie Smith
Notary Public



WESTERN POWERLINE TRAIL

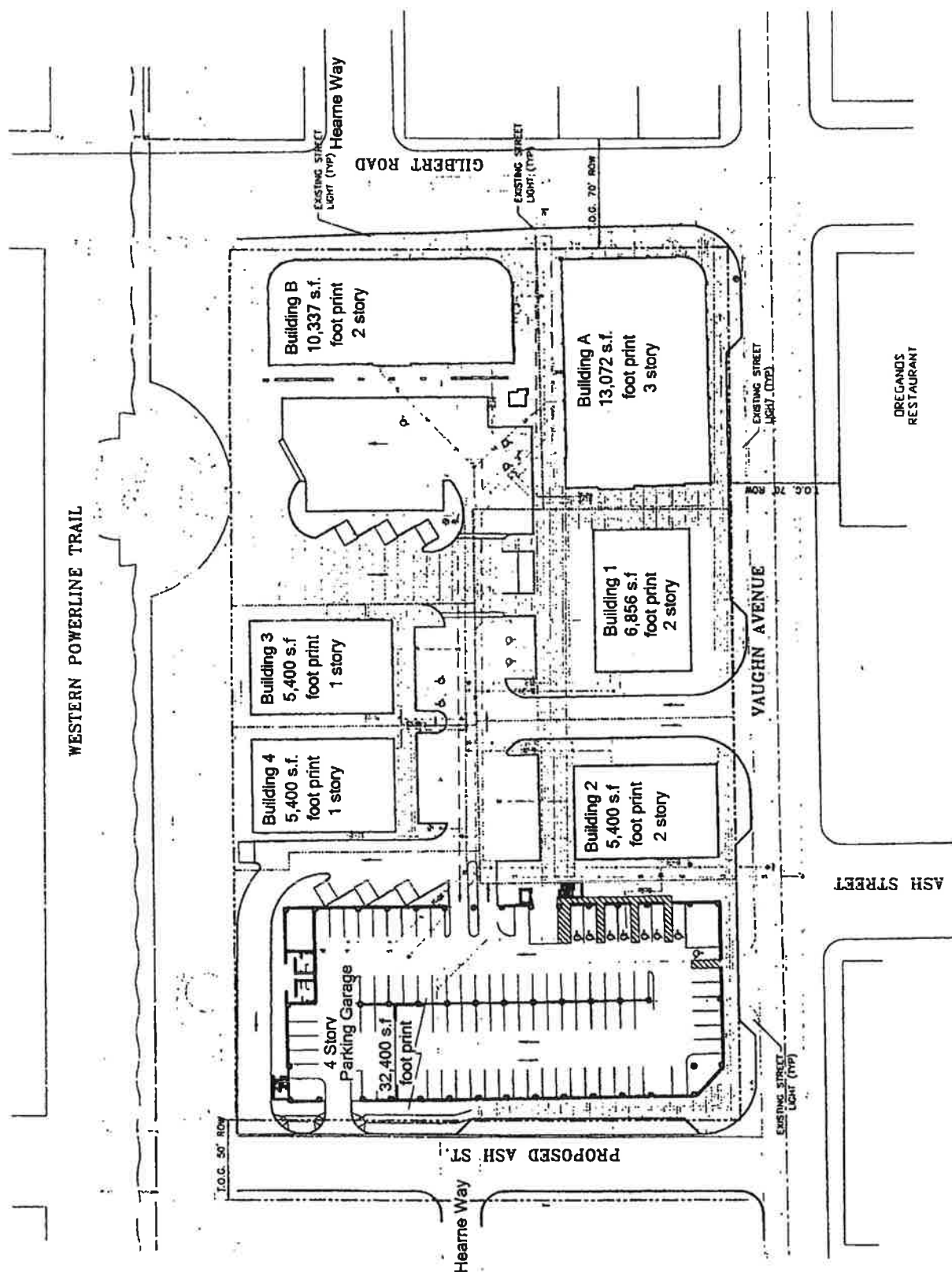


EXHIBIT E

SCHEDULE OF PERFORMANCE

The following revised schedule is preliminary in nature and represents approximate submittal dates and plan turn-around times. Since the Project will be part of the P.E.R.T. program, a final schedule will be reached by mutual consent of the Gilbert Development Services Department and representatives of Heritage Marketplace, L.L.C. prior to submittal of plans.

Site Plan/Architecture

All Planning Division submittals and hearings, except for signage, are complete for Buildings A & B and the Parking Structure and the Project has been approved by the Design Review Board, Redevelopment Commission and Town Council. Future approvals will be needed for the individual pad sites as they are developed as they have only received conceptual approval from the Redevelopment Commission. The following draft schedule is representative of the design review/approval process:

Applicant to submit required documentation for the individual pad sites to the Redevelopment Commission.

Redevelopment Commission hearing to be heard within two months (approximate) from date of submittal.

A more exact schedule will be worked out through the P.E.R.T. process.

Permits

Typical turn-around time for construction drawing permits is 20 working days for first review and 10 working days for second review. A more exact schedule will be worked out through the P.E.R.T. process.

Commencement/Completion of Construction

HERITAGE MARKETPLACE, L.L.C. will commence construction for development of the Property no later than December 31, 2010 and complete construction no later than September 1, 2011. Commencement of construction will be defined by the start of the concrete foundations for either Building A or Building B. Completion of construction will be defined as the date a certificate of completion (or equivalent) as issued by Gilbert for either Building A or Building B.

12/15/09

When recorded return to:

Town Clerk
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

DEVELOPMENT AND DISPOSITION AGREEMENT

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2007, by and between HERITAGE MARKETPLACE, L.L.C, an Arizona limited liability company ("Heritage Marketplace"), and the TOWN OF GILBERT, ARIZONA, an Arizona municipal corporation ("Gilbert"). Heritage Marketplace may be collectively referred to as "Developer".

RECITALS:

- A. Gilbert has adopted a Redevelopment Plan for the redevelopment of its historic downtown, an area known as the "Heritage District." A principal goal of the Redevelopment Plan is to further economic development in the historic downtown area.
- B. The property, which is located at the northwest corner of Gilbert Road and Vaughn Avenue, and more specifically described in Exhibit A attached hereto ("Property"), is located in the Heritage District.
- C. On September 5, 2006, Gilbert issued a Request for Proposals ("RFP") for the sale and development of the Property and an Addendum on September 11, 2006. On October 20, 2006 the Developer responded to the RFP with an offer to purchase the Property on terms and conditions which contemplated the Developer's acquisition of the Property and subsequent development of the Property for a mixed-use project consistent with the Heritage Village Center (HVC) zoning designation of the Property (the "Project").
- D. Gilbert selected the Developer's response to the RFP and, as a result thereof, the parties are entering into this Agreement for the purpose of setting forth the terms and conditions with respect to which the acquisition of the Property and development of the Project by Developer will occur. This Agreement shall supersede and replace in their entirety the RFP and the response thereto submitted by the Developer.
- E. Economic development in the Heritage District will depend on the availability of parking for downtown businesses. The parking structure to be constructed pursuant to this Agreement will serve the critical roles of (i) promoting continued economic growth and development of the Heritage District, and (ii) attracting Class A office projects into the downtown to provide a strong employment base, support existing and future retail and restaurant uses and serve as a catalyst to attract desired uses into the Heritage District.
- F. A.R.S. Section 9-500.05 authorizes Gilbert to enter into a Development Agreement with a landowner or other person having an interest in real property located in Gilbert.

G. This Agreement is voluntarily entered into by the parties to further the purposes of Gilbert's Redevelopment Plan and to fulfill Gilbert's need for mixed uses in the Heritage District, including restaurants, the creation of new jobs, the stimulation of further economic development within Gilbert, and other tangible and intangible, direct and indirect benefits to Gilbert and its citizenry. Developer acknowledges that the Project is an economically viable use at this location and no change in use for a period of five (5) years after the date of this Agreement will be permitted without amending this agreement. Any change that requires a rezoning shall follow the normal notice and hearing procedures.

H. This Agreement is being entered into for the purposes of satisfying the above Recitals and is consistent with the Redevelopment Plan for the Heritage District and Gilbert's General Plan.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Property: This Agreement shall govern the sale of the property, development and use of the Project.

2. Intended Development of Property:

2.1 The Developer shall develop the Property in conformance with the site plan and architectural renderings attached hereto as Exhibit B (the "Conceptual Development Plan"). The Project shall consist of a Class A, signature, three-story office building of approximately 39,000 square foot (labeled "Building A" on Exhibit B) and a two-story, mixed-use, retail/restaurant and office building of approximately 20,150 square foot (labeled "Building B" on Exhibit B). The space in Buildings A and B is expected to be marketed as "for lease." The Project also includes three (3) proposed individual lots (totaling approximately 53,143 square feet of land area) that are expected to be marketed as "for-sale" build-to-suit opportunities to retail, restaurant, office and/or residential users. The total square footage of the project is estimated to be approximately 70,000 – 90,000 square feet.

2.2 If development of the Property also requires a planned area development ("PAD") zoning amendment to modify any zoning restrictions of the signage requirements of the HVC zoning district, then a zoning amendment shall be processed. Such application may be processed by Developer concurrently with the application for design review approval. Upon receipt of Redevelopment Commission approval of the final site plan and architectural renderings, the final site plan and architectural renderings shall be attached and replace the existing Exhibit B. If the re-zoning application is not approved or if the Redevelopment Commission does not ultimately approve a final site plan and architectural renderings consistent with the Conceptual Development Plan, then the Parties agree to work in good faith to negotiate a revised, but mutually acceptable, Conceptual Development Plan. In the event that a mutually acceptable Conceptual Development Plan cannot be agreed upon within twelve (12) months of the execution of this Agreement, then this Agreement shall automatically terminate and any funds held in Escrow shall be returned to Developer.

3. Conveyance of Property to Developers: Concurrently with the execution of this Agreement, Gilbert and the Developer shall execute the Real Estate Purchase Contract attached hereto as *Exhibit C* (the "Purchase Contract"), which Purchase Contract contains the specific terms and

conditions applicable to the sale of the Property by Gilbert to Developer. The parties acknowledge that the purchase price of five hundred eighty two thousand, three hundred thirty five dollars (\$582,335), based upon \$5.00 per square foot at 116,467 square feet of land set forth in the Purchase Contract is the fair value of the Property, taking into account the use restrictions which are being imposed on the Property pursuant to this Agreement and the Developer acknowledges such restrictions are reasonable and further the purposes of the Redevelopment Plan for the Heritage District. The parties hereto acknowledge that this Agreement and the Purchase Contract shall govern all of the terms and conditions relating to the conveyance of the Property by Gilbert to the Developer. In connection therewith, the parties hereby acknowledge and agree that the Developer's obligation to acquire the Property and develop the Property pursuant to the terms of this Agreement and the Purchase Contract shall be subject to and conditioned upon the satisfaction, or Developer's written waiver, of the following conditions precedent.

3.1. The Developer shall have reviewed and approved the physical condition of the Property pursuant to the provisions of Paragraph VII of the Real Estate Purchase Contract;

3.2. The Developer shall have reviewed and approved the condition of title and all survey matters affecting the Property pursuant to the provisions of Paragraph VI of the Purchase Contract;

3.3. Gilbert shall have approved the final site plan and working drawings for the improvements to be constructed by Developer, subject only to such conditions and stipulations as are acceptable to Developer pursuant to the provisions of **Section 4.3** below;

3.4 Notwithstanding anything contained in this Agreement to the contrary, if the conditions precedent described in Subparagraph 3.1 above are not satisfied or waived by Developer in writing within 180 days after the mutual execution of this Agreement, then, Gilbert shall have the right to terminate the Real Estate Purchase Contract by serving written notice to the Developer and the parties shall have no further rights, duties or obligations hereunder.

4. Gilbert Responsibilities:

4.1 Gilbert shall construct or cause to be constructed the following public improvements:

4.1.1 A public parking garage or similar structure (the "Parking Structure") shall be constructed, or cause to be constructed, by Gilbert for use by the general public, including patrons of the Property. Design on the Parking Structure will begin no later than January 31, 2008 and construction of the Parking Structure shall begin no later than June 1, 2009 in order to complete construction by December 1, 2009. The Parking Structure shall contain approximately 365 parking spaces (surface and structure) and shall be constructed on the property owned by Gilbert as depicted in Exhibit B (Conceptual Development Plan). For the first seven (7) years after completion of construction of the Parking Structure, Gilbert shall not charge a parking fee to the general public or patrons of the Property (including employees of tenants, visitors, and guests of Buildings A, B, C, D & E as designated on the Conceptual Development Plan) for use of the Parking Structure, except as provided in paragraphs 5.11 and 5.11.1 of the Development and Disposition Agreement. The exact size, location, configuration and design of the Parking Structure shall be agreed upon by the Parties prior to initiation of construction activities, and shall comply with Gilbert requirements. The agreement of one party to the size, location or configuration will not be unreasonably withheld. The Parties agree that the final location and siting of the Parking Structure will be in general accordance with the Conceptual Development Plan. If the

Parties fail to reach agreement on the size, location and configuration of the Parking Structure on or before January 30, 2008, Gilbert shall determine such size, location and configuration at its sole discretion, which shall include the number of parking spaces agreed to by both Parties in Section 4.1.1 of this Agreement.

4.1.2 Except in the event of Unavoidable Delay (as that term is defined in Paragraph 6.1), if construction of the Parking Structure is not completed within 30 days of the Developer receiving its Certificate of Occupancy for either Building A or B, then the Developer will send a letter stating that Gilbert has 30 days to complete the Parking Structure without penalty. If Gilbert does not complete construction of the Parking Structure within the second 30 day period, Gilbert shall pay \$23,600 to the Developer for each month that the Parking Structure is not complete for a period of up to four months and a total of \$94,400. Gilbert shall also be responsible for providing sufficient surface parking within a reasonable proximity to either Building A or B at no additional cost to the Developer. If the Parking Structure after the additional cure period of four months, the Developer may construct the Parking Structure pursuant to the requirements of the public bidding laws and in conformance to the design prepared by Gilbert. Gilbert shall reimburse Developer actual costs of construction, including an additional standard Developer/Project Management fee upon completion of the Parking Structure by Developer in accordance with the design provided by Gilbert to Developer. Prior to construction of the Parking Structure by Developer, Gilbert shall provide to Developer its requirements for public bidding and required record keeping and all relevant documents and plans relating to the Parking Structure. Gilbert shall retain all ownership and maintenance responsibilities for the Parking Structure into the future. If the Developer assumes responsibility for completing the Parking Structure and if additional outside financing is required for its completion, then Gilbert agrees to guarantee, in writing in a format as reasonably required by Developer's financial institution, all additional funds necessary for completing the Parking Structure.

4.1.3 Gilbert will allocate no more than 250 parking stalls within the Parking Structure for exclusive use of patrons of the Property (including employees of tenants, visitors, and guests of Buildings A, B, C, D & E as designated on the Concept Development Plan). It is anticipated that up to 50 of the spaces will be reserved for lease by building tenants, as referenced in paragraph 5.11 of this Agreement. Gilbert and Developer shall execute a mutually-acceptable parking license agreement providing for use of these 250 stalls in perpetuity. The specific location of said stalls shall be subject to mutual review and approval by Developer, which such approval shall not be unreasonably withheld.

4.1.4 At the end of the first seven (7) year period, at Gilbert's discretion, Gilbert may begin a charge for parking. The charge for parking shall be based upon market rates for parking in similar parking structures as determined by an independent evaluation.

4.1.5 Gilbert shall construct improvements to the Western Powerline Trail Park and coordinate with Developer to incorporate those improvements into the Project's final site plan design and layout.

4.2 Gilbert shall provide any necessary off-site improvements required for the approval of the Project, including improvement of relocated Ash Street (including adjacent sidewalks, landscaping and the like), any new or relocated street lights in any adjacent public streets, any new traffic signals, and sidewalks and landscaping along Ash next to the parking structure. Gilbert will also make improvements to the north end of the parking structure, including the area adjacent to the Western Powerline Trail Park. However, Developer will provide sidewalks and landscaping improvements along

the east side of the parking structure, along Gilbert Road and Vaughn Avenue and the portion of Ash between Vaughn Avenue and the south end of the parking structure.

4.3 Gilbert shall process the Project through its Partner Experiencing Results Together (P.E.R.T.) program. Gilbert agrees that no unusual or extraordinary plan or review requirement, conditions or stipulations will be imposed on the Developer or on any Phase of the Project.

4.4 Gilbert acknowledges that time is of the essence in the performance of its obligations of this Agreement and as such, Gilbert shall expedite all plan reviews and field inspections to the extent possible, as outlined in the P.E.R.T. schedule defined in Exhibit E, Schedule of Performance.

5. Developer's Responsibilities:

5.1 Gilbert and the Developer intend that the planning and development of the Project shall be achieved pursuant to the Schedule of Performance attached hereto as Exhibit E. From time to time following the date of this Agreement, however, the Developer and Gilbert shall, by mutual written agreement, refine and revise the Schedule of Performance as may be necessary to accommodate any unforeseen factors, events or unexpected occurrences which may necessitate such requirement or revision, such as, among other things, market considerations, adverse interest rates or other market factors adversely affecting the economic feasibility of development of the Project. All actions required to be taken by Gilbert and the Developer pursuant to the terms of this Agreement shall be taken in accordance with the Schedule of Performance in existence at the time when such performance is required.

5.2 Developer acknowledges that all improvements made by Developer to the Property shall conform to the Redevelopment Plan for the Heritage District and otherwise be in accordance with this Agreement and all applicable Gilbert codes and standards.

5.3 Developer shall construct a minimum of 50 parking spaces on the Property, as generally reflected by the Conceptual Development Plan and shall maintain the surface parking areas and all hardscape and landscape parking areas adjacent to the parking structure as depicted in Exhibit B (Conceptual Development Plan).

5.4 Developer agrees to work with Gilbert on locating a mutually beneficial location for a future bus stop along the Gilbert Road side of the property.

5.5 All construction on the Property shall be in conformance with the Heritage District Design Guidelines.

5.6 Approvals as appropriate by the Planning Commission, Redevelopment Commission (with consideration given to the recommendations made by the Design Review Board) and the Gilbert Council shall be required for development of the Project.

5.7 If, in connection with Gilbert's approval of the final site plan for the Property, Gilbert has required the relocation or undergrounding of any utilities, or the construction of off-site improvements and streetscape improvements, then the Developer shall, in conjunction with the construction of the Project, perform such activities. In addition, the Developer will be required to construct any on-site utilities located specifically within the limits of the property.

5.8 The Parties agree that construction of the Project is expected to commence no later than July 31, 2008, subject to delays caused by the occurrence of any Unavoidable Delays (as that term is defined in Paragraph 6.1) or if Town fails to meet obligations established in Paragraph 4.3.

5.8.1 Except in the event of Unavoidable Delay (as that term is defined in Paragraph 6.1) if Developer has commenced construction on the Property by July 31, 2008, or such later date as the parties agree in writing, but thereafter fails to substantially complete construction of either Building A or Building B by December 31, 2009, or such later date as the parties agree in writing, subject to the occurrence of any Unavoidable Delays or delays caused by Gilbert, then Gilbert shall have the right to provide a written notice of default to Developer stating that the Developer has sixty (60) days to complete either Building A or B without penalty. If the Developer does not complete either Building A or B within the 60 day period the Developer shall pay \$23,600 to Gilbert for each month that either Building A or B is not complete for a period up to four months and an amount not to exceed \$94,400. If Developer fails to thereafter substantially complete construction of either Building A or Building B within the six month period stated above, Developer shall immediately re-convey the Property to Gilbert, free and clear of all liens and encumbrances created by Developer after close of escrow on the property. Developer shall pay to Gilbert the costs incurred by Gilbert for the design and construction of the Parking Structure in an amount not to exceed \$2,000,000, less the purchase price paid by Developer for the Property, but not any improvements on the property. All dates assume execution of the Development Agreement by September 25, 2007 and are subject to day to day extension based upon ultimate date of execution of the Development Agreement.

5.9 Developer acknowledges that the Property currently consists of more than one platted lot and that the Developer shall be responsible for the costs of replatting said lots. Gilbert shall reasonably cooperate in the replatting effort, to the extent requested by Developer.

5.10 Developer agrees to construct sidewalks along Vaughn Avenue and Gilbert Road that generally replicate the design and materials used in the streetscape surrounding the Oregano's Pizza Bistro located south of the Project.

5.11 In consideration for the parking rights provided the Project by the Parking License Agreement, Developer shall cooperate with Gilbert in the leasing of a certain portion of covered and "reserved for individual" parking stalls to employees of tenants of the Project. Revenue from this parking will either be paid directly to Gilbert or will pass through the Heritage Marketplace ownership. It is anticipated that between 10%-15% (approximately 50 spaces) of the total number of stalls allocated for use by patrons of the Project will be leased from Gilbert as covered and "reserved for individual." Developer agrees to allocate additional "reserved for individual" parking stalls if the demand increases in the future. The leased spaces will be reserved between 8:00 AM and 6:00 PM, Monday-Friday. The rental rate to be charged shall be comparable to other parking structures of Class A buildings in the Phoenix metropolitan area as determined by an independent evaluation. The revenue based on Project tenants paying a premium for reserved covered stalls within the Parking Structure is estimated to be approximately:

Years 1 through 5 \$24,000/year (50 stalls at \$40 per stall, per month)

Years 6 through 10 \$27,000/year (50 stalls at \$45 per stall, per month)

Years 11 through 15 \$30,000/year (50 stall at \$50 per stall, per month)

The total payment over fifteen years is estimated to be \$405,000. These payments will be made on a quarterly basis. It should be noted that the total number of reserved stalls is an estimate and could be higher or lower based on demand. Heritage Marketplace agrees to pass all revenue on to Gilbert, but in no way guarantees the payments listed above because the actual demand is unknown at this time.

5.11.1 The balance of the parking stalls provided for use by tenants of the Project (approximately 200), as described in paragraph 4.1.3 of this Agreement, will be a combination of covered and non-covered stalls. These stalls will be located in signed, permit/decal-required areas for exclusive use by the Project and will not be open parking available to the general public between the hours of 8:00 AM and 3:00 PM, Monday-Friday.

5.11.2 In consideration for the parking rights provided the Project by the Parking License Agreement, Developer shall make a payment to Gilbert in the amount of \$349,401.00. This payment shall be made in two parts as follows:

\$50,000 paid within 30 days of commencement of construction of the Parking Structure.

\$299,401 paid within 30 days of completion of the Parking Structure.

5.11.3 In consideration for the parking rights provided the Project by the Parking License Agreement, Developer shall also make payments to Gilbert in the amount of \$243,375, paid over fifteen annual payments as follows:

Years 1 through 5 \$14,750/year

Years 6 through 10 \$16,225/year

Years 11 through 15 \$17,700/year

Annual payments will be made on or about January 1 each year commencing with the first January following the Parking Structure completion date.

5.11.4 In consideration for the parking rights provided the Project by the Parking License Agreement, Developer shall also make an annual contribution to the maintenance and operation of the Parking Structure in the amounts that follow:

Years 1 through 5 \$3,500/year

Years 6 through 10 \$4,375/year

Years 11 through 15 \$5,250/year

The total payment over 15 years will be \$65,625. These annual payments will be made on or about January 1 commencing with the first January following the Parking Structure completion date.

5.12 Developer shall include in the Project a minimum of two (2) restaurants of at least 2,000 SF (two thousand square feet) in size. Parties agree that the definition of restaurant for the purpose of this Agreement shall include dining facilities that are both order at the table and order at the

counter services. If Developer fails to comply with this paragraph, Gilbert may terminate this agreement.

6. General Provisions:

6.1. Whether stated or not, all periods of time in this Agreement are subject to this paragraph. Neither Gilbert nor Developer shall be considered in default of this Agreement in the event of Unavoidable Delays. In the event of the occurrence of an Unavoidable Delay, the time or times of performance shall be extended for the period of the Unavoidable Delay, providing that the Party seeking the benefit of the Unavoidable Delay shall, within thirty (30) days after such Party knows of any such Unavoidable Delay, notify the other Party in writing of the event giving rise to the Unavoidable Delay. "Unavoidable Delays" shall mean the following acts or events, to the extent that they substantially impair the ability of a Party to carry out its obligations under this Agreement: acts of God, acts of the Federal, state or local government (other than ordinary course of business activities or decisions of the Town), acts of war or terrorism, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated by this Agreement (other than the effect of litigation instituted by Developer, or a successor in interest or tenant of Developer, against the Town), fires, floods, epidemics, quarantine, strikes, embargoes, and unusually severe and unanticipated weather or the delays of subcontractors or materialmen due to such causes. In no event shall: (i) any Party's financial condition or inability to fund or obtain funding, financing or leasing constitute an Unavoidable Delay with respect any obligation of such Party; or (ii) any delay arising from a Party's default or other failure to perform under this Agreement constitute an Unavoidable Delay with respect to such Party's obligations under this Agreement.

6.2 Notices: All notices, filings, consents, approvals under the communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid, to:

To Gilbert:

Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

To Developer:

Mike Nelson, Managing Member
Heritage Marketplace, L.L.C.
1045 76th Street, Suite 2000
West Des Moines, IA 50266

Tim Becker
Heritage Marketplace, L.L. C.
101 North First Avenue, Suite 2000
Phoenix, AZ 85003

Rhett Bordner & Brian Martin
Heritage Marketplace, L.L.C.
1010 East Vista del Cerro, Suite A
Tempe, Arizona 85281

or such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten days before the date on which the change is to become effective.

6.3 Mailing Effective: Notices given by mail shall be deemed delivered 72 hours following deposit in the U.S. Postal Service in the manner set forth above.

6.4 Waiver: No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same of any other provision of this Agreement. Nothing herein or in the stipulation shall constitute or be deemed to be a waiver by Developer of its rights to request future rezoning or changes in development standards for all or any portion of the Property pursuant to Gilbert procedures and requirements existing at the time of the request.

6.5 Attorneys Fees and Costs: If legal action by either party is required because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys and court costs.

6.6 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.7 Headings: The description headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

6.7 Entire Agreement: This Agreement, together with the Purchase Contract and all exhibits, constitutes the entire Agreement between the parties and shall not be changed or added to except as agreed to by the parties in writing. All prior and contemporaneous agreements, representations and understandings of the parties, oral or writing, are superseded by this Agreement.

6.9 Amendment or Cancellation of the Agreement: Except as otherwise provided herein, this Agreement may be amended or canceled in whole or in part and with respect to all or any portion of the Property only with the mutual consent of Gilbert and Developer of that portion of the Property to which the amendment or cancellation will be applicable. Within ten days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by Gilbert in the official records of Maricopa County.

6.10 Severability: If any provision of this Agreement is declared void or unenforceable, the provisions will be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the parties is not materially vitiated by the severability.

6.11 Governing Law: This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

6.12 Recordation: No later than ten days after this Agreement has been executed by Gilbert and Developer it shall be recorded in its entirety by Gilbert in the official records of Maricopa County, Arizona.

6.13 Default, Remedies: If any party to this Agreement breaches any provision of this Agreement the non-defaulting party shall be entitled to all remedies set forth in this Agreement or as may be available at both law and in equity including specific performance.

6.14 Authority: The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement.

6.15 Binding Effect: This Agreement shall be assignable to Developer's lender(s), buyer(s), affiliated limited liability companies, and/or other relevant parties, subject to notice to Gilbert, as is customarily required for the financing and/or sale of the similar real property. This Agreement is binding on successors, assigns and transferees of any interest in the Property and shall be incorporated by reference in any instrument purporting to convey any instrument to the Property.

6.16 Third Parties: There are no third party beneficiaries to this Agreement.

6.17 Marketing Signage/Trailer: Developer shall be permitted to install marketing trailer/signage, subject to Gilbert sign ordinance, to market the Project and the Developer upon execution of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

TOWN OF GILBERT, an Arizona municipal corporation

By _____
Steven M. Berman, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2007, before me, the undersigned officer, personally appeared Steven M. Berman, who acknowledged himself to be the Mayor of the TOWN OF GILBERT, an Arizona municipal corporation:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by
me duly sworn;
_____ whose identity I verified on the basis of his _____,

and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

HERITAGE MARKETPLACE, L.L.C.
an Arizona Limited Liability Company

By _____

Michael K. Nelson

Its Managing Member

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2007, before me, the undersigned officer,
personally appeared _____, who
acknowledged him/herself to be _____ of HERITAGE
MARKETPLACE, L.L.C., an Arizona limited liability company:

_____ whom I know personally;
_____ whose identity was proven to me on the oath of _____, a credible witness by
me duly sworn;
_____ whose identity I verified on the basis of his/her _____

and s/he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes
therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Beginning at the southeast corner of Tract B, Ayers Subdivision;

Thence south $89^{\circ}09'35''$ west, 540 feet plus or minus, to the southwest corner of Lot 2 of Creeds Addition;

Thence north $00^{\circ}49'41''$ west along the west line of said Lot 2 north $00^{\circ}50'44''$ west a distance of 161 feet plus or minus;

Thence north $89^{\circ}09'35''$ east a distance of 351 feet plus or minus;

Thence north $00^{\circ}50'44''$ west a distance of 146 feet plus or minus;

Thence south $89^{\circ}30'57''$ east 189 feet plus or minus more or less to the west right of way of Gilbert Road;

Thence along said right of way south $00^{\circ}50'44''$ east 307 feet plus or minus less to the point of beginning;

Containing 116,467 square feet or 2.67 acres more or less.

EXHIBIT B
CONCEPTUAL DEVELOPMENT PLAN

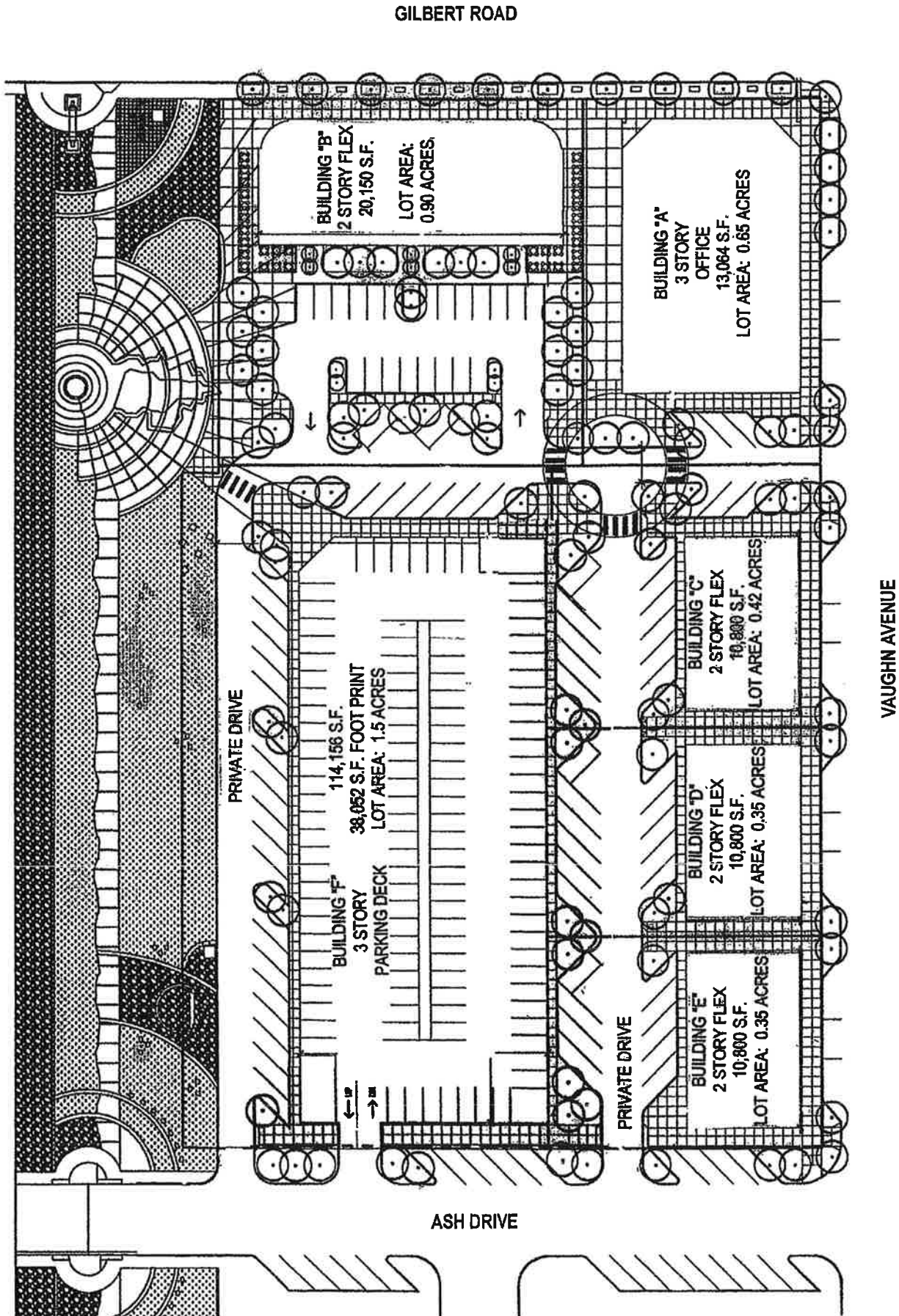


EXHIBIT C

HERITAGE MARKETPLACE REAL ESTATE PURCHASE CONTRACT

The parties to this Real Estate Purchase Contract (the "Contract") are HERITAGE MARKETPLACE, L.L.C., an Arizona limited liability company, (hereinafter "Buyer"), and the TOWN OF GILBERT, ARIZONA, a municipal corporation organized under the laws of the State of Arizona (hereinafter "Seller"). The Buyer and Seller are entering into this Contract pursuant to the terms and conditions of that Development and Disposition Agreement of even date herewith between the parties (the "Development Agreement"). Pursuant to the terms and conditions of the Development Agreement, the Seller agrees to sell and the Buyer agrees to purchase certain real property under the terms and conditions set forth below:

I. LEGAL DESCRIPTION

The Property to be conveyed by the Seller to the Buyer under this Contract is legally described in Exhibit 1, attached hereto and made a part hereof.

II. PURCHASE PRICE

The total purchase price for the Property is \$5.00 per square foot based upon approximately 116,467 square feet of land, for a total purchase price of five hundred eighty two thousand, three hundred and thirty five dollars (\$582,335), to be paid by the Buyer to the Seller for the Purchase of the Property, through Fidelity National Title, 2390 E. Camelback Road, Suite 340, Phoenix, Arizona 85016, serving as Escrow Agent, upon close of escrow. The Final Purchase Price is subject to adjustment based upon the actual net square feet of land area per ALTA survey of the Property.

III. BROKERAGE COMMISSION

The Seller has represented itself, and has not been represented by a real estate broker, agent or agency to market and sell the Property. Seller is solely responsible for compensating costs contained within any agreements, and hereby indemnifies the Buyer against any claim for commission (including all costs and attorneys' fees expended in defending against such claim) arising from or related to the transaction set forth in this Contract. This indemnity shall survive termination of this Contract.

IV. RISK OF LOSS

A. Except as otherwise provided in this Contract, all risk of loss related to ownership and possession of the Property, including liability to third persons, shall be the responsibility of the Seller until the title and possession of the Property passes to the Buyer at Close of Escrow. Seller shall indemnify and hold Buyer harmless for all such loss, damage, liability, fees or costs of any kind whatsoever, except those caused by the Buyer. This indemnity shall survive termination of this Contract.

B. Seller and Buyer shall include Property in its liability insurance coverage.

V. CLOSING COSTS AND PRORATIONS

- A. Seller will pay all escrow fees related to the sale of the Property, including a standard Owner's Policy naming Buyer as the insured. The Seller shall be responsible for all property taxes and assessments levied and due against the Property prior to closing. The Buyer shall be responsible for all taxes and assessments levied against the Property after the closing date.
- B. All of the above-referenced costs that are the responsibility of the Seller shall be paid into escrow on or before the Close of Escrow in addition to the purchase price. All costs that are the responsibility of the Buyer as referenced above shall be paid from the proceeds of the sale price to which the Seller is entitled.

VI. TITLE WARRANTY

Fee simple absolute title to the Property shall be transferred by the Seller to the Buyer as stated in Section III above by General Warranty Deed, which shall include conveyance of all surface and ground water rights related to the Property. Buyer is only obligated to accept title to the Property at Close of Escrow if: (1) the Property is free and clear of all defects, exceptions, easements, covenants, conditions, restrictions, mining claims, liens and encumbrances; and (2) the Buyer, at its sole discretion, is otherwise satisfied with the condition of title as reflected in the Title Report which shall be subject to the review and approval of the Buyer. In connection therewith, prior to or concurrently with the execution of this Agreement, the Escrow Agent shall prepare a preliminary title report prepared by a title insurer (the "Title Company") acceptable to the Buyer (the "Title Report") which sets forth all liens, encumbrances or other exceptions to title applicable to the Property, together with legible copies of all recorded liens, encumbrances and title exceptions as may be disclosed therein. In addition, within thirty (30) days after the execution of this Agreement, the Seller shall cause to be prepared and delivered to Buyer a current ALTA survey of the Property, which survey shall identify and calculate the square footage of all right-of-way dedications and easements (the "Survey"). Fee simple title to the Property shall be conveyed to Buyer free of any liens, encumbrances or other exceptions to title, except those items approved by Buyer Developer in the Title Report (the "Permitted Title Exceptions"). If, after reviewing the Title Report and the Survey, the Buyer objects to any title exceptions set forth in the Title Report or shown on the Survey, the Seller shall use commercially reasonable efforts to cause any such objected items to be removed as a title exception or to cause the Title Company to insure over such matters at its sole cost and expense. If the Seller fails to cause such matter to be removed as an exception or insure over such matter, then the Buyer shall have the right to cause the same to occur and offset the costs incurred against the Purchase Price to be paid by Buyer to the Seller at Closing.

VII. INVESTIGATIONS

Buyer shall have until the Close of Escrow to make such investigations of the Property as Buyer deems necessary to assure Buyer that the Property is suitable for Buyer's intended purposes and that no hazardous wastes or substances are located on or under the Property. Upon the mutual execution of this Agreement, the Seller shall deliver to the Buyer all reports, studies, investigations, materials, analyses, tests and evaluations (including, without limitation, environmental assessments) which the Seller may have in its possession or its control and in any way related to the Property. In addition to the materials provided by the Seller, the Buyer shall

have the right from time to time to enter upon the Property for the purpose of conducting any separate investigation, test, survey, analysis or evaluation with respect to the condition of the Property. All costs and expenses of any additional tests, studies, surveys or analyses desired by the Buyer shall be paid for by the Buyer. In the event that any such analysis, test, study or evaluation of the Property discloses that environmental remediation is necessary or required for any portion of the Property, then, in that event, Buyer shall have the right to elect to either (a) not acquire title to the affected portion of the Property and to acquire and develop the balance of the Property, in which event the parties shall work together in good faith to make appropriate modifications to the Conceptual Development Plan in order to permit development of the Property exclusive of the affected portion of the Property, or (b) consummate the acquisition of the Property and offset against the Purchase Price to be paid by Buyer to the Seller the estimated costs and expenses to be incurred by Buyer in connection with the remediation of such conditions, provided however that the Town shall first have approved the costs of remediation.

VIII. SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS

Seller warrants, represents, and covenants (with the understanding that Buyer is relying on these warranties, representations, and covenants) that:

- A. Except as reflected in the preliminary title report at the time of execution of the Contract, there are no claims, actions, suits, or other proceedings pending or threatened by any governmental department or agency or any other corporation, partnership, entity, or person whomsoever, nor any voluntary actions or proceedings contemplated by Seller, which in any manner or to any extent may detrimentally affect Buyer's right, title, or interest in and to the Property or the value of the Property or Seller's ability to perform Seller's obligations under this Contract.
- B. Seller owns the Property in fee simple absolute, subject only to the matters reflected in the preliminary title report.
- C. There is no pending or threatened condemnation or similar proceeding affecting any part of the Property, and Seller has not received any notice of any such proceeding and has no knowledge that any such proceeding is contemplated.
- D. No work has been performed or is in progress at the Property and no materials have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against any part of the Property.
- E. Seller is not prohibited from consummating the transactions contemplated by this Contract or any law, regulation, agreement, instrument, restriction, order or judgment.
- F. There are no parties in adverse possession of the Property; there are no parties in possession of the Property except Seller; and no party has been granted any license, lease, or other right relating to the use of possession of the Property.
- G. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other laws for relief of debtors contemplated or filed by Seller or pending against Seller or affecting or involving the Property.

- H. There is no default, nor has any event occurred which with the passage of time or the giving of notice or both would constitute a default in any contract, mortgage, deed of trust, lease, or other instrument which relates to the Property or which affects the Property in any manner whatsoever.
- I. There are no contracts or other obligations outstanding for the sale, exchange, or transfer of all or any part of the Property.
- J. There are no violations of laws, rules, regulations, ordinances, codes, covenants, conditions, restrictions, instructions, or agreements applicable to the Property. Seller has not received notices from any insurance companies, governmental agencies, or any other person with respect to violations concerning the Property. If any notices of violations are received prior to Close of Escrow, Seller shall immediately submit copies to Buyer and Buyer's review and acceptance shall be a condition precedent to Close of Escrow.
- K. Seller will not at any time prior to Close of Escrow grant to any person an interest in the Property.

IX. CLOSE OF ESCROW

- A. Escrow shall be opened within 30 days of execution of the Development Agreement by the Town of Gilbert, by Buyer depositing \$25,000 into an escrow account. This Escrow Deposit will be considered non-refundable and shall apply to the Purchase Price, except in the event that Gilbert does not ultimately approve the Project subject to the Project being in general accordance with the Conceptual Development Plan and subject to any mutually-agreeable changes to the Conceptual Development Plan by the Parties.
- B. The balance of the Purchase Price shall be paid and the Close of Escrow shall occur within 90 days of the final approval of the Project by the Redevelopment Commission, or at anytime earlier at Buyer's discretion, subject to satisfaction of all conditions precedent to Closing as described in Section 3 of the Development Agreement for the Property and subject to the provisions of Section VI of this purchase contract. Close of Escrow will be at the offices of Fidelity National Title Insurance Company, in Phoenix, Arizona.
- C. Any encumbrances existing against the Property at the Close of Escrow shall be satisfied from the proceeds of the sale price.

X. EMINENT DOMAIN/CONDEMNATION

Should, for any reason, all or any portion of the Property be purchased prior to Close of Escrow by any government entity (other than Seller) by eminent domain or condemnation, any proceeds from such transaction shall belong solely to the Seller. Upon condemnation of all or any portion of the Property, Seller shall be responsible to pay all escrow costs and fees related to this Contract and all rights and obligations of the parties under this Contract shall terminate.

XI. USE OF SUBJECT PROPERTY

Seller shall have the exclusive right to use the Property until Close of Escrow. Seller agrees to maintain the Property through Close of Escrow in the same condition the Property exists at the execution of this Contract. Seller shall not remove any fixtures or improvements from the Property unless otherwise agreed to by the Buyer in writing. The Buyer does not have any right to use or enter upon the Property until completion of the Close of Escrow and transfer of title, unless otherwise agreed to by the Seller.

XII. RIGHT TO ENCUMBER

As referenced above, the Property is to be free and clear of all liens and encumbrances at the time of transfer of title from the Seller to the Buyer. The Seller shall not voluntarily encumber the Property after execution of this Contract. Seller agrees that all encumbrances existing against the Property at Close of Escrow shall be satisfied from the proceeds of the sale.

XIII. ASSIGNABILITY

Neither the Seller nor the Buyer may assign any of its rights or obligations under this Contract without the other party's advance written consent, which shall not be unreasonably withheld. This Contract shall be binding upon Seller and Buyer and their respective successors and assigns.

XIV. DEFAULT

- A. Default by Seller: All provisions of this Contract are hereby deemed to be material. The Buyer shall have all rights and remedies available to it under Arizona law should the Seller breach any of the provisions under this Contract. Buyer shall immediately be entitled to the return of all amounts it paid pursuant to the Contract and to terminate the Contract, to damages and to specific performance by Seller, should the Seller breach any provision of this Contract.
- B. Default by Buyer: All provisions of this Contract are hereby deemed to be material. The parties agree that Seller's sole remedy for Buyer's breach of this Contract shall be to retain any deposits held in Escrow.
- C. Escrow Costs and Fees. The breaching party shall be responsible to pay all escrow costs and fees related to this Contract.
- D. Attorneys' Fees and Court Costs. The prevailing party shall be entitled to an award of all costs and attorneys' fees incurred should legal action be necessary by either party to enforce the terms of this Contract.

XV. SUPERSEDING AGREEMENT

This Contract, together with the Development Agreement, constitutes the entire contract of the parties relating to the Property and the parties agree that the terms of this Contract and the Development Agreement shall supersede all previous oral and written contracts between them.

XVI. MODIFICATION

The terms of this Contract may only be modified upon written approval of all parties to this Contract.

XVII. SEVERABILITY

In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

XVIII. ARIZONA LAW

Seller and Buyer both acknowledge that this Contract is executed in Maricopa County, Arizona, and relates to property located in Maricopa County, Arizona. Should legal action be necessary to enforce the terms of this Contract, all parties agree that the laws of the State of Arizona shall apply. All parties agree that the proper venue for any lawsuit shall be Maricopa County, Arizona.

XIX. AMBIGUITY

This Contract was drafted by the Seller with the assistance of their attorneys. Neither the Seller nor its attorneys at the law firm of Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C. have rendered legal or other advice to Buyer regarding sale of the subject property or the specific terms of this Purchase Contract. Buyer is aware of its right to obtain independent professional and/or legal assistance with this Contract and, upon signing of the Contract, represents that they have taken all steps they deem necessary (including but not limited to, seeking the advice of professionals and/or attorneys) to assist them with this transaction. Consequently, the ambiguity in this Contract shall not be construed against either party.

XX. CONFLICT OF INTEREST

The Buyer recognizes that the Seller is a political subdivision of the State of Arizona. Pursuant to A.R.S. § 38-511, the Seller may cancel this Agreement within three (3) years after its execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the Seller is, at any time while the Contract or any extension thereof is in effect, an employee or agent of the Buyer in any capacity or a consultant to the Seller with respect to the subject matter of this Contract. Notice of any such cancellation shall be given by the Buyer to the Seller with respect to the subject matter of this Contract. Notice of any such cancellation shall be given by the Seller to the Buyer pursuant to the terms of A.R.S. § 38-511. Should cancellation occur under this provision, the Seller shall return to the Buyer all moneys paid by the Buyer under this Contract, together with all costs and expenses incurred by Buyer in connection with the purchase and development of the Property, Seller shall be responsible for payment of all escrow fees, and Buyer shall convey the Property back to the Seller.

XXI. AUTHORITY TO EXECUTE

The Seller and Buyer both acknowledge that the persons whose signatures appear below have appropriate authority to execute this Contract on behalf of the Seller and Buyer. This Contract may be executed in several counterparts which together shall constitute an original.

XXII. NOTICES

Notices required or permitted by this Contract shall be given in writing and personally delivered or sent by first class mail, postage prepaid to:

Buyer:

Mike Nelson, Managing Member
Heritage Marketplace, L.L.C
1045 76th Street, Suite 2000
West Des Moines, IA 50266

With a copy to:

Tim Becker
Heritage Marketplace, L.L.C.
101 North First Avenue, Suite 2000
Phoenix, AZ 85003

and

Rhett Bordner & Brian Martin
Heritage Marketplace, L.L.C.
1010 East Vista del Cerro Drive, Suite A
Tempe, Arizona 85281

Seller:

Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

With a copy to:

Susan D. Goodwin
Seller Attorney
Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
2712 North Seventh Street
Phoenix, Arizona 85006-1090

SIGNATURE PAGE FOLLOWS

ACCEPTED BY:

DATE: _____, 2007

BUYER:

HERITAGE MARKETPLACE, L.L.C.,
an Arizona limited liability company

By Michael K. Nelson
Its Managing Member

SELLER:

TOWN OF GILBERT, ARIZONA,
a municipal corporation

By _____
Steven M. Berman, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

By _____
Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
Seller Attorneys

EXHIBIT 1 TO PURCHASE CONTRACT
PROPERTY DESCRIPTION
FOR HERITAGE MARKETPLACE, L.L.C.

Subject property is 116,467 square feet or 2.67 acres more or less and is located at the northwest corner of Gilbert Road in Vaughn Avenue in Gilbert, Arizona. The legal description is as follows:

Beginning at the southeast corner of Tract B, Ayers Subdivision;

Thence south $89^{\circ}09'35''$ west, 540 feet plus or minus, to the southwest corner of Lot 2 of Creeds Addition;

Thence north $00^{\circ}49'41''$ west along the west line of said Lot 2 north $00^{\circ}50'44''$ west a distance of 161 feet plus or minus;

Thence north $89^{\circ}09'35''$ east a distance of 351 feet plus or minus;

Thence north $00^{\circ}50'44''$ west a distance of 146 feet plus or minus;

Thence south $89^{\circ}30'57''$ east 189 feet plus or minus more or less to the west right of way of Gilbert Road;

Thence along said right of way south $00^{\circ}50'44''$ east 307 feet plus or minus less to the point of beginning;

Containing 116,467 square feet or 2.67 acres more or less.

EXHIBIT E

SCHEDULE OF PERFORMANCE

The following schedule is preliminary in nature and represents approximate submittal dates and plan turn-around times. Since the Project will be part of the P.E.R.T. program, a final schedule will be reached by mutual consent of the Gilbert Development Services Department and representatives of Heritage Marketplace, L.L.C. prior to submittal of plans.

Site Plan/Architecture

Applicant to submit required documentation on or about December 1, 2007 for Design Review Board.

Design Review Board Hearing to be heard no later than its February 2008 meeting.

Design Review Board will make a recommendation to the Redevelopment Commission.

Redevelopment Commission will hear case at its March 2008 meeting.

Permits

Typical turn-around time for construction drawing permits is 20 working days for first review and 10 working days for second review. A more exact schedule will be worked out through the P.E.R.T. process.

Commencement/Completion of Construction

HERITAGE MARKETPLACE, L.L.C. will commence construction for development of the Property no later than July 31, 2008 and complete construction no later than December 31, 2009. Commencement of construction will be defined by the start of the concrete foundations for either Building A or Building B. Completion of construction will be defined as the date a certificate of completion (or equivalent) as issued by Gilbert for either Building A or Building B.